

COMPLAINT NUMBER	18/017
COMPLAINANT	B Swinburn
ADVERTISER	Coca-Cola Oceania
ADVERTISEMENT	Coca-Cola Oceania
DATE OF MEETING	13 February 2018
OUTCOME	Not Upheld, in part; No Jurisdiction, in part

SUMMARY

The Coca-Cola Christmas in the Park events in Auckland and Christchurch were promoted via digital and print advertisements which appeared in newspapers and on news websites. The advertisements included fireworks and people dancing on a stage with the message “Coca-Cola Christmas in the Park. Supporting Youthline. Merry Christmas from Coca-Cola. Come share the magic.”

The Complainant was concerned the Coca Cola Christmas in the Park advertising was targeting children and young people stating, in part: “This event targeting children (up to age 18) and youth... is probably the largest advertising of an unhealthy product directed at children this year with ads in bus shelters, on highways, in print and online as well as the event itself.” The Complainant was also concerned that “hundreds of free Coke drinks were given away to children, who made up a large percentage of the audience” at the Coca Cola Christmas in the Park events.

The Advertiser said the Coca Cola Christmas in the Park events did not constitute advertisements but were “a community initiative with the purpose of providing value and entertainment to the audience.” The Advertiser also provided copies of the digital and print advertisements which appeared on news websites and in newspapers.

The Complaints Board confirmed it did not have jurisdiction to consider the events and the product giveaway at the event were outside its jurisdiction.

The Complaints Board confirmed the advertisements for the events were sponsorship advertisements that used a company name but did not contain occasional food and beverage products. The Complaints Board said while aspects of the advertisements would be appealing to children and young people, including the event and fireworks, they were placed in mediums that were not targeting them. The Complaints Board said the advertisements were not in breach of Principle 1, Rule 1(a), Rule 1(i) Rule 1(j) or Principle 2, Principle 3, Rule 3(a) and Rule 3(b) of the Children and Young People’s Advertising Code.

The Complaints Board ruled the advertisements had been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics and ruled to Not Uphold the complaint.

The Complaints Board ruled the complaint about the advertisements was Not Upheld, and the complaint about the events was outside the Board’s jurisdiction.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the complaint with reference to Principle 1, Rule 1(a), Rule 1(i) Rule 1(j) and Principle 2, Principle 3, Rule 3(a) and Rule 3(b) of the Children and Young People's Advertising Code.

Principle 1 requires that advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

Rule 1(a) requires that advertisement must not urge children or young people to ask their parents, guardians or caregivers to buy particular products for them.

Rule 1(i) required the Complaints Board to consider whether advertisements (including sponsorship advertisements) for occasional food or beverage products targeted children or were placed in any media where children were likely to be a significant proportion of the expected average audience.

Rule 1(j) requires that advertisements for occasional food and beverage product which is advertising to young people require the Advertiser and Media had applied a special duty of care.

Principle 2 required that advertisements, whether by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

Principle 3, Rule 3(a) and Rule 3(b) required the Complaints Board to consider whether a special duty of care was exercised for occasional food and beverage Product sponsorship targeted to young people and must not show an occasional food or beverage product, or such product's packaging, or depict the consumption of an occasional food or beverage product or imitate or use any parts of product advertisement for occasional food or beverage products from any media.

The Chair also directed the Complaints Board to consider the complaint with reference to the Basic Principle 4 of the Code of Ethics which requires all advertisements are prepared with a due sense of social responsibility to consumers and to society.

The Complaints Board ruled the complaint about the advertisements was Not Upheld, and the complaint about the events was outside the Board's jurisdiction

Complaint from B. Swinburn

The Complainant was concerned the Coca Cola Christmas in the Park advertising targeting children and young people stating in their complaint, in part: "This event targeting children (up to age 18) and youth... is probably the largest advertising of an unhealthy product directed at children this year with ads in bus shelters, on highways, in print and online as well as the event itself."

The Complainant was also concerned that "hundreds of free Coke drinks were given away to children, who made up a large percentage of the audience" at the Coca Cola Christmas in the Park events.

Response from the Advertiser, Coca-Cola Oceania

The Advertiser responded to the Complainant's concerns about the Coca-Cola In The Park events, stating, in part it "is not a marketing advertisement or a form of advertising, but rather

a corporate community initiative... Accordingly, we submit that the Event does not constitute an advertisement as defined by the ASA, but rather a community initiative with the purpose of providing value and entertainment to the audience. At no point during the Event do we have any brand messaging to influence the audience in consuming or purchasing any Coca-Cola product. ... there is no messaging aimed at influencing consumption or purchase intent of our beverages and therefore, we submit that the Event does not constitute advertising or an advertisement as defined by the ASA.

...the Event does not aim to target children, rather it focuses on attracting families to the Event. Each year, the Event attracts a significant number of people across both Auckland and Christchurch with tens of thousands of New Zealanders in attendance each year. Given the size of the audience, we do not have a detailed breakdown of the ages of people attending the Event... in instances where we provide sampling on the Event's grounds, we ensure the strict adherence to the rules and guidelines as outlined in our Responsible Marketing policy. Our company's policy is that no member of the Coca-Cola team may hand out any product to children under the age of 14."

Complaints Board Discussion

The Complaints Board was required to consider whether the Coca-Cola In The Park events constituted an advertisement and whether the advertising promoting the events were targeting appeal to children or young people.

Jurisdiction over the events

The Complaints Board noted the ASA definition of an advertisement which states:

"Advertising and advertisement(s)" are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed."

The Complaints Board also referred to a precedent Decision (07/619) dealing with a complaint about the Boobs on Bikes Parade in Auckland. That precedent said in part:

"The Complaints Board agreed that while parades may contain elements of promotion or advertising within the events themselves, which were likely to be subject to the ASA Codes of Practice, the Complaints Board viewed parades generally as events, not advertisements."

Taking into account the definition of advertisement and the precedent decision on a parade event, the Complaints Board said the Coca Cola Christmas in the Park events fell outside the jurisdiction of the Advertising Standards Complaints Board. It noted the events were a community initiative, of which the Coca-Cola Company was a named sponsor, and other sponsors included Stuff, Television New Zealand, MoreFM, The Lion Foundation and Auckland and Christchurch City Councils. The Complaints Board agreed the event's purpose was entertainment, rather than having an intent to influence the choice, opinion or behaviour of consumers to purchase products.

As the Coca-Cola Christmas in the Park event did not constitute an advertisement, the Complaints Board did not have jurisdiction to consider the Complainant's concerns about the potential distribution of Coca-Cola products to children under 14 years of age.

The Complaints Board confirmed it did not have jurisdiction to consider the events and the product giveaway at the events were outside its jurisdiction.

Sponsorship or product advertising

The Complaints Board was then required to consider whether the advertisements promoting the events were sponsorship or product advertisements.

The Complaints Board noted the Complainant referred to advertisements in “bus shelters, on highways, in print and online as well as the event itself.” The Complaints Board confirmed the Advertiser was asked to supply copies of the advertisements used in promoting the Coca-Cola Christmas in the Park. The Advertiser provided copies of digital and print advertisements which appeared on news websites and in newspapers which the Complaints Board considered.

The Complaints Board said the advertisements were sponsorship advertisements for Christmas in the Park and Youthline with a clear association with the Coca-Cola Company brand. The Complaints Board noted there were no images of Coca-Cola products in the advertisements, but the advertisements did include the Coca-Cola logo. The Complaints Board said the focus of the advertisements was the promotion of the events, including relevant information such as the location, date and time, rather than a call to action to purchase Coca-Cola products.

The Complaints Board confirmed that sponsorship advertisements for occasional food or beverage products must not target children or be placed in any media where children are likely to be a significant proportion of the expected average audience. A special duty of care must be exercised for sponsorship advertisements for occasional food and beverage products targeted to young people, and they must not show an occasional food or beverage product, or such product’s packaging, or depict the consumption of an occasional food or beverage product.

Having confirmed the advertising before it was company sponsorship advertising, taking the above into account, the Complaints Board was then required to determine whether the sponsorship advertisements were targeting children and/or young people, and therefore, whether the Children and Young People’s Advertising Code applied.

The Complaints Board noted the criteria for ‘targeting’ in the Children and Young People’s Code as follows;

‘Targeting’ is determined by the context of the advertisement and the relationship between the following three criteria;

1. Nature and intended purpose of the product or service being promoted is principally or generally appealing to children or young people.
2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is appealing to children or young people.
3. Expected average audience at the time or place the advertisement appears includes a significant proportion of children or young people.”

Appeal to Children and/or Young People?

The Complaints Board considered whether the advertisement before it appealing to children or young people, which for the purposes of the Code are defined as follows:

- **“Children”** means all persons below the age of 14 years.
- **“Young People”** means all persons who are at least 14 years but under 18 years.

Product

The Complaints Board said the Christmas in the Park event, supporting Youthline and the Coca-Cola Company brand were the main ‘products’ being promoted and considered whether they were likely to have principal or general a strong appeal to children or young people or were likely to encourage them to engage with the advertisements directly.

It said the Christmas in the Park event was orientated towards a family audience but had a strong appeal to children and young people. Further, while some children may be aware of Youthline, it was a helpline facility aimed mainly at young people. Therefore, the Complaints Board said the Christmas in the Park event and supporting Youthline, had a moderate appeal to children and young people.

The Complaints Board noted there were no Coca-Cola products shown in the advertisements for the Coca-Cola Christmas in the Park event, only the brand name as required for sponsorship advertising.

Presentation

The Complaints Board then considered whether the overall presentation of the advertisements was appealing to children or young people.

While the Complaints Board noted the advertisements primarily communicated logistical information about the events, they were brightly coloured and contained images of fireworks and people dancing on a stage with obvious references to Christmas.

The Complaints Board said the execution of the advertisements were likely to appeal to children or young people.

Placement

The Complaints Board then considered the placement of the advertisements and whether the expected average audience included a significant proportion of children or young people.

The Complaints Board noted the measures to determine if children are likely to be a 'significant proportion' of the expected average audience may include one or a combination of the following;

1. Where accurate data exists, 25% or more of the expected audience will be children.
2. Child viewing time zones.
3. Content with significant appeal to children such as programmes, artists, playlists, video, movies, and magazines.
4. Locations where children gather (e.g. schools, school grounds, pre-school centres, playgrounds, family and child clinics and paediatric services and during any children's sporting and cultural events).

The Complaints Board noted the advertisements were placed on digital news websites and in the main newspaper based on location in relation to the events, Christchurch and Auckland.

In assessing whether the advertisements were likely to be seen by children and young people on the Stuff and NZ Herald websites and respective newspapers, the Complaints Board said they were primarily targeted at an adult readership. While it noted that there were no restrictions on children or young people accessing these platforms, they did not form 25% or more of the expected audience. The Complaints Board said the advertisements were targeting adults with its choice of medium.

Targeting Children and Young People?

The Complaints Board said the Christmas in the Park event was appealing to children and young people and Youthline was also likely to engage with young people, given it was a service for that demographic. The Complaints Board said the advertisement was visually attractive to children and young people, showing fireworks and people dancing on stage.

However, the Complaints Board said the placement of the advertisements were clearly targeted towards parents, rather than children and young people.

The Complaints Board held, on balance, it was unlikely the advertisements would be seen by a significant proportion of children or young people and found while it had elements that may be attractive to children and young people, they were not targeting them.

Potential Breach of Codes

The Complaints Board confirmed it did not have jurisdiction to consider the events and the product giveaway at the events were outside its jurisdiction.

Having established the items before it were sponsorship advertisements that did not contain food and beverage products, and were not targeting children or young people, the Complaints Board said the advertisements were not in breach of Principle 1, Rule 1(a), Rule 1(i) Rule 1(j) or Principle 2, Principle 3, Rule 3(a) and 3(b) of the Children and Young People's Advertising Code.

The Complaints Board ruled the advertisements had been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics and ruled to Not Uphold the complaint.

Accordingly, the Complaints Board ruled the complaint about the advertisements was Not Upheld, and the complaint about the event was outside the Board's jurisdiction.

DESCRIPTION OF ADVERTISEMENT

The digital and print advertisements which appeared in newspapers and on news websites promoted the Coca-Cola Christmas in the Park event in Auckland and Christchurch. The advertisement included fireworks and people dancing on a stage with the message "Coca-Cola Christmas in the Park. Supporting Youhtline. Merry Christmas from Coca-Cola. Come share the magic."

COMPLAINT FROM B SWINBURN

Coca Cola Christmas in the Park (9 December 2017, Auckland Domain) is million dollar marketing event targeting children (up to age 18) and youth. The brand marketing highly dominant and hundreds of free Coke drinks were given away to children, who made up a large percentage of the audience. It is probably the largest advertising of an unhealthy product directed at children this year with ads in bus shelters, on highways, in print and online as well as the event itself. If the ASA code is to protect children from unhealthy food advertising, it should rule against this event.

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

CHILDREN AND YOUNG PEOPLE ADVERTISING CODE

Principle 1: Advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

Principle 2: Advertisements must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

Principle 3: A special duty of care must be exercised for Occasional Food and Beverage Product sponsorship advertising targeted to young people.

Rule 1(a): Advertisements must not urge children or young people to ask their parents, guardians or caregivers to buy particular products for them.

Rule 1(i): Advertisements (including sponsorship advertisements) for occasional food or beverage products must not target children or be placed in any media where children are likely to be a significant proportion of the expected average audience

Rule 1(j): A special duty of care must be applied to occasional food and beverage product advertising to young people.

Rule 3(a): Sponsorship advertisements must not show an occasional food or beverage product, or such product's packaging, or depict the consumption of an occasional food or beverage product.

Rule 3(b): Sponsorship advertisements must not imitate or use any parts of product advertisements for occasional food or beverage products from any media.

RESPONSE FROM ADVERTISER - COCA-COLA OCEANIA

Thank you for your letter dated 12 January 2018 regarding a complaint received in relation to Coca-Cola Oceania Limited's (CCO) Christmas in the Park Event ('the Event') held on 9 December 2017 in Auckland.

We thank you for bringing this matter to our attention.

A description of the Event:

The Event to which the complaint relates to is a free annual Christmas community initiative produced and presented by CCO and Coca-Cola Amatil (N.Z.) Ltd (CCA NZ). CCO has been producing this Event since 1994, bringing friends and families together year after year for New Zealand's biggest free outdoor Christmas musical celebration. A key element to the Event is the opportunity for our charity partner to raise funds, with millions of dollars raised over the last 24 years.

The Event is a unique, multi-cultural showcase which, every year, presents some of the nation's most talented singers, dancers and musicians. The Event has helped launch the career of many successful performers. This CCO community initiative has also created employment, work experience and personal development opportunities for thousands of Kiwis over the last 24 years. Each year over 125 people are involved in the production; from sound and lighting, to stage construction and management, plus over 500 more who get involved on the day including; local police, road marshals, parking attendants, first aid workers, security guards and charity volunteers.

Comprehensive comments in relation to the complaint

Advertising Standards Authority's (ASA) Advertising Code of Ethics ('Code of Ethics'):

The complaint has raised concern that the Event breaches the following sections of the Code of Ethics:

1. Basic Principle 4.

ASA's Children and Young People's Advertising Code ('the Code'):

The complaint has also raised concern that the Event breaches the following sections of the Code:

1. Principle 1; Rule 1(a), 1(i), 1(j);
2. Principle 2; and
3. Principle 3; Rule 3(a), 3(b).

CCO's response to claim of breach of Code of Ethics Basic Principle 4:

Basic Principle 4 under the ASA's Code of Ethics provides that all advertisements should be prepared with a due sense of social responsibility to consumers and to society. The complainant has raised concern that CCO has breached this section of the Code and stated that:

"The brand marketing is highly dominant and hundreds of free Coke drinks were given away to children, who made up a large percentage of the audience. It is probably the largest advertising of an unhealthy product directed at children this year with ads in bus shelters, on highways, in print and online as well as the Event itself."

We submit that we have not breached Basic Principle 4 of the Code of Ethics for the reasons outlined below:

1. In accordance with The Coca-Cola Company's (TCCC) Responsible Marketing Policy, CCO is committed to the responsible marketing of TCCC's products. We submit that our dedication at ensuring the responsible marketing of TCCC's products demonstrates our due sense of social responsibility to consumers and to society.

We have a history of aligning our commercial practices with our sustainability goals, our business goals, and our values. Our Responsible Marketing Policy sets forth our commitments in this regard. We will respect the role of parents and caregivers by not marketing directly to children under 14 years of age in New Zealand. Specifically, this means we will not advertise in:

- i. All media which directly targets children under 14, including television shows, print media, websites, social media, movies, and SMS/email marketing.
 - ii. We define media that directly targets children under 14 as media in which 25% or more of the audience is composed of children under 14, where this information is possible to obtain.
2. Further, per instructions to our activations agency, we have developed clear guidelines to align with TCCC Responsible Marketing Policy. These Guidelines further demonstrate our compliance with Basic Principle 4 and our preparedness at ensuring a due sense of social responsibility. These Guidelines instruct all personnel at the Event on the rules of giving out samples to under 14's. Per our guidelines, we have set out clear rules and guidance notes to all our staff to ensure that no child under the age of 14 years is given any product. Per these guidelines, under 14's must have a parent or legal guardian over the age of 18 years with them to receive any Coca-Cola product on their behalf. As supporting evidence of this, we have **attached** the Coca-Cola Christmas in the Park sampling instructions on the "Under 14 Rule" given to our brand ambassadors at Coca-Cola Christmas in the Park 2017 in Christchurch and Auckland.

CCO's response to claim of breach of the ASA's Children and Young People's Advertising Code Principle 1 and Rules 1(a), 1 (i) & 1(j):

The complaint raises potential issues under Principle 1 which provides that advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

The complaint also raised potential issues under Rules 1(a), 1(i) and 1(j). Rule 1(a) states that advertisements must not urge children or young people to ask their parents, guardians or caregivers to buy particular products for them. Rule 1(i) states that advertisements (including sponsorship advertisements) for occasional food or beverage products must not target children or be placed in any media where children are likely to be a significant proportion of the expected average audience. Rule 1(j) states that a special duty of care must be applied to occasional food and beverage product advertising to young people.

We submit that we have not breached Principle 1 and Rules 1(a), 1(i) and 1(j) for the reasons outlined below:

1. Firstly, the Event is not a marketing advertisement or a form of advertising, but rather a corporate community initiative. Advertising and Advertisement(s) under the ASA's Children and Young People's Advertising Code are defined as; *"any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed."*

Accordingly, we submit that the Event does not constitute an advertisement as defined by the ASA, but rather a community initiative with the purpose of providing value and entertainment to the audience. At no point during the Event do we have any brand messaging to influence the audience in consuming or purchasing any Coca-Cola product. We have **attached** the full show run-sheet as supporting evidence to demonstrate there is no messaging aimed at influencing consumption or purchase intent of our beverages and therefore, we submit that the Event does not constitute advertising or an advertisement as defined by the ASA.

2. In addition, the Event does not aim to target Children, rather it focuses on attracting families to the Event. Each year, the Event attracts a significant number of people across both Auckland and Christchurch with tens of thousands of New Zealanders in attendance each year. Given the size of the audience, we do not have a detailed breakdown of the ages of people attending the Event. However, the replay of the Event on TVNZ allows an insight on the audience age groups of people interested in the Event. We have attached the target audience rating point (TARPs) information of the on air numbers of the Event. The TARPs enables us to quantify the percentage of a specific target audience viewing a program at the time. The TARPs highlights that 79.2% of the audience viewing the event are aged between 25 years – 65+ years of age. In vast contrast the age groups of 5 years – 24 years of age consists of only 20.8% of the total audience viewing the Event.

3. Further, in instances where we provide sampling on the Event's grounds, we ensure the strict adherence to the rules and guidelines as outlined in our Responsible Marketing policy. Our company's policy is that no member of the Coca-Cola team may hand out any product to children under the age of 14. We have attached the detailed instructions we provide to our activations team to ensure our "Under 14" rule is strictly adhered to and complied with at the Event.

4. The complainant further states that the Event is the; *"largest advertising of an unhealthy product directed at children this year with ads in bus shelters, on highways, in print and online as well as the Event itself."* We submit that none of the advertising for Coca-Cola Christmas in the Park includes any images of our product or makes any 'calls to action' aimed at increasing sales or consumption. Any advertising surrounding this Event is aimed at generating awareness of the Event itself. We have **attached** the CCCITP advertisements in different formats as supporting evidence of this.

CCO's response to claim of breach of Code Principle 2 and Principle 3 and Rules 3(a) & 3(b):

The complaint also raises potential issues under Principle 2 which provides that advertisements must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

Additionally, the complaint also raises concern that Principle 3 and Rules 3(a) and 3(b) have been breached. Principle 3 states that a special duty of care must be exercised for occasional food or beverage product sponsorship advertising targeted to young people. Rule 3(a) provides that sponsorship advertisements must not show an occasional food or beverage product, or such product's packaging, or depict the consumption of an occasional food or beverage product. Rule 3(b) provides that Sponsorship advertisements must not imitate or use any parts of product advertisements for occasional food or beverage products from any media

As mentioned in our response above to Principle 4, the Event is not an advertisement, but rather a community initiative. At no point throughout the Event does CCO try to influence or encourage children or young people to get their parents, guardians or caregivers to buy them any Coca-Cola product. Rather, the entirety of the show consists of songs and dancing for entertainment purposes. The only time in which Coca-Cola is mentioned throughout the Event, is to make known that the Event is brought together by our corporate brand.

Conclusion

As a global iconic brand, The Coca-Cola Company takes its obligations to do business with integrity and engage in ethical conduct very seriously. Our business is built on this trust and reputation.

Coca-Cola understands the importance of its role, as a global and iconic brand, to encourage positive messaging to all consumers. We take the above Principles and Rules of the Code and the Code of Ethics very seriously. We feel that the underlying messaging of the Event is one of positivity and fun at Christmas time and reflects a high standard of social responsibility. We feel that the Event sends a very positive message and does not contain anything that could result in the physical, mental or moral harm of children or young people.

It is CCO's view that the Christmas in the Park Event, for the reasons listed above, fully complies with all elements of the Code and Code of Ethics. We consider that when assessed against the relevant Code provisions and the relevant audience, the Event does not breach the Code or the Code of Ethics.

We are very happy to answer any further questions you may have and please let us know if you need more information.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.